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SUPREME COURT, U.S.
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No. 94-731

In The

Supreme Court of the United States

October Term, 1994

COUNTY OF LAKE, INDIANA,

Petitioner,

v.

STEVEN MYERS and ROBERT MYERS,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Court of Appeals properly interpreted and applied Indiana law to a pendent state tort claim arising out of an attempted suicide by the respondent Steven Myers while incarcerated in the Lake County Juvenile Center (LCJC), thereby precluding review on writ of certiorari under Rule 10 of the Rules of this Court?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

JURISDICTION 1

STATUTORY PROVISIONS 1

STATEMENT OF THE CASE 2

SUMMARY OF THE ARGUMENT 9

ARGUMENT 11

A. Consistent with the method established by this Court, the Court of Appeals properly predicted that Indiana would not recognize intentional efforts to commit suicide as defenses to the tort of negligently failing to prevent suicide attempts 11

B. Consistent with the method established by this Court, the Court of Appeals properly predicted that Indiana would allow a parent and child, who suffer separate injuries, to each recover up to $300,000 under its Tort Claims Act 14

CONCLUSION 17

APPENDIX A-1

TABLE OF AUTHORITIES

Page

CASES

Andis v. Hawkins, 489 N.E.2d 78 (Ind. App. 1986) 15, 17

Automotive Underwriters, Inc. v. Camp, 32 N.E.2d 112 (Ind. App. 1941) 15

Breese v. State, 449 N.E.2d 1098 (Ind. App. 1983) 12

Buffalo v. Buffalo, 441 N.E.2d 711 (Ind. App. 1982) 15, 17

Cole v. Indiana Dept. of Correction, 616 N.E.2d 44 (Ind. App. 1993) 11

Collection Bureau of Warrick County, Inc. v. Sweeney, 434 N.E.2d 143 (Ind. App. 1982) 16

Fowler v. Norways Sanatorium, 42 N.E.2d 415 (Ind. App. 1942) 12

Memorial Hospital of South Bend, Inc. v. Scott, 300 N.E.2d 50 (Ind. 1973) 13

Meredith v. Winter Haven, 320 U.S. 228, 64 S.Ct. 7 (1943) 11

Nelson v. Heyne, 355 F.Supp. 451 (N.D. Ind. 1972), *aff'd.* 491 F.2d 352 (7th Cir. 1974), *cert. den.* 417 U.S. 976 (1977) 12

Reed v. State, 479 N.E.2d 1248 (Ind. 1985) 11

Salve Regina College v. Russell, 499 U.S. 225, 111 S.Ct. 1217 (1991) 11

Scott County School District One v. Asher, 324 N.E.2d 496 (Ind. App. 1975) 16

TABLE OF AUTHORITIES – Continued

Page

Stropes v. Heritage House Childrens Ctr., 547 N.E.2d 244 (Ind. 1989) 12

Tittle v. Mahan, 582 N.E.2d 796 (Ind. 1992) 12

STATUTES

I.C. § 31-6-1-1(3) 1, 12

I.C. § 31-6-4-18 ..... 1, 16

I.C. § 31-6-9-5 ..... 1, 12

I.C. § 34-1-1-8 ..... 1, 15

I.C. § 34-4-16.5-4 ..... 2, 14, 16

MISCELLANEOUS

210 I.A.C. §§ 4-1-2 & 4-1-4 ..... 2, 13, 14

Restatement, Second, Torts, § 314A 12, 13

Restatement, Second, Torts § 703 15

Liability of Jail for Self-Inflicted Injury, 79 ALR3d 1210, 1216-17 (1977) 13

Suicide of Mental Patient, 19 ALR4th 7, 15-21 (1983) 13

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RESPONDENTS' BRIEF IN OPPOSITION

JURISDICTION

The judgment of the Court of Appeals was entered on July 22, 1994 and the jurisdiction of this Court is based on 28 U.S.C. § 1254(1). Jurisdiction in the district court was based on 28 U.S.C. §§ 1331, 1343 and 1367.

STATUTORY PROVISIONS

The relevant statutory provisions include Ind. Code §§ 31-6-1-1(3), 31-6-4-18, 31-6-9-5, 34-1-1-8 and

34-4-16.5-4; relevant regulations are 210 I.A.C. §§ 4-1-2 and 4-1-4. *See Appendix at A-1 - A-4.*

STATEMENT OF THE CASE

Steven Myers, at the age of sixteen (16), was confined involuntarily in the LCJC on January 4, 1989 when he tied a bed sheet around his neck and hung from a door hinge in an attempted suicide. This attempt went unnoticed by detention officers, and the defective monitoring system, until it was brought to their attention by a resident in a room across the hall from Steven. He was discovered in time to save his life, however, he suffered extensive and permanent brain damage. Steven, his father (Robert) and stepmother (Terri) brought this action for damages alleging negligence under state law and a violation of the fourteenth amendment to the U.S. Constitution. After summary judgment was granted in favor of the defendants on the federal claim shortly before trial, the pendent state negligence claim was tried and the jury returned its verdict, *R. # 82,* in favor of the plaintiffs, Robert and Steven Myers, and against the County of Lake, awarding Steven $500,000 and Robert $400,000. Subsequently, after receiving memoranda on the application of the $300,000 statutory limit on damages against state and local government in Indiana, on August 3, 1992 the court ordered, *R. # 98, Petition App. at 15a-18a,* that each plaintiff was entitled to $300,000 and a judgment in the amount of $600,000 was entered on the same date. *R. # 99.*

The LCJC is a secure detention facility, housing juveniles who are there involuntarily. *Tr. 185.* It was designed for eighty-four (84) residents and was at capacity on January 4, 1989. *Tr. 186-87.* Defendant Bennett was superintendent of the LCJC during all times relevant to this case, *Tr. 178-91,* but was not familiar with Indiana Department of Corrections (DOC) regulations dealing with juvenile detention facilities. *Tr. 186.* Residents of the LCJC were classified by age, size and sex, but not by general behavioral characteristics, *Tr. 187,* as required by DOC regulations. *Ex. 52.* The purpose of the juvenile justice system in Indiana is to rehabilitate and treat children brought into the system as persons in need of care, treatment, rehabilitation or protection. *Tr. 183-84.*

In 1975 a Consent Decree, *Ex. 53,* was entered in the U.S. District Court for the Northern District of Indiana. It involved, among other things, the staffing at the LCJC, *Id.,* and required a full-time psychologist for each forty-four (44) children, *Id.; Tr. 206,* and a group leader, preferably with a B.A. degree in school psychology, social work or education, for every two (2) children in the LCJC. *Ex. 53; Tr. 206.* One of the duties of the psychologists was to conduct a complete evaluation of each child upon admission to the LCJC. *Id.* During the relevant times the LCJC had only a part-time psychologist, at the LCJC on Tuesdays and Thursdays, and there is no indication that Steven Myers was evaluated by a psychologist when he was admitted to the LCJC on December 7, 1988. *Tr. 432-33.* The defendants' expert, Dr. Macellari, agreed that it makes sense to have every child evaluated by a psychologist upon admission and that one of the purposes of this would be to discover suicidal tendencies. *Tr. 775-76.*

There was no policy at the LCJC requiring staff members to obtain documents from other institutions, such as juvenile detention facilities, where residents had been detained before arriving at the LCJC. *Tr. 204-05.* Amy Byer, an intake officer, testified that she usually did not contact outside sources of information when conducting the intake process. *Tr. 223.*

Mr. Bennett testified that he believed Steven Myers' attempted suicide might have been prevented if there had been additional staff at the LCJC. *Tr. 188-89.* A detention officer at the LCJC, Mr. Sullivan, testified that the LCJC was always understaffed. *Tr. 256.* Prior to January 4, 1989 Mr. Bennett had sought additional staff at the LCJC, but the request was turned down by Lake County. *Tr. 189.* Subsequent to Steven Myers' attempted suicide, Mr. Bennett's request for additional detention officers was approved. *Id.* Steven Myers was in isolation at the time he attempted suicide. *Tr. 191.* A sound-monitoring system was supposed to be turned on whenever a resident was in isolation in his room, but on January 4, 1989 some of the monitors were not working and Mr. Bennett does not know whether it was working in Steven Myers' room at the time of the attempted suicide. *Tr. 191-92.* The resident chart should include an entry or two for each day, but Steven Myers' chart had no entries for December 17, 21 and 28, 1988. *Ex. 1 & A; Tr. 492.* In 1988 there were fifteen (15) suicide attempts or gestures at the LCJC, one as late as December 28, 1988. *Ex. 11; Tr. 198-99.* Mr. Holden, a detention officer and the first LCJC staff member to arrive on the scene of Steven Myers' attempted suicide, *Tr. 140-43,* did not have CPR training even though that was a requirement for LCJC staff. *Tr. 203.*

After three (3) earlier periods of detention at the LCJC, *Ex. 1; Tr. 475-76,* Steven Myers was transferred there, from the Porter County Juvenile Detention Center, pursuant to court order on December 7, 1988. *Tr. 214.* When Steven was at the LCJC in March 1988 he was placed on suicide watch. *Ex. 2 & 7; Tr. 433-34 & 490-91.* The circled "S" on Exhibit 2 indicates suicide watch. *Tr. 490-91.* Mr. Desler, the therapist at LCJC who testified that the records show he talked to Steven Myers on December 7, 1988, did not recall talking to Steven on that date, did not recall if he knew at the time of this conversation that Steven had been on suicide watch in March 1988, and testified that the circled "S" on Exhibit 2 indicated a clothing size. *Tr. 650-52.* The records of Desler's interview in early December 1988 show that he entered the date and the fact that Steven ran from a placement, was being held pending a theft charge, had no long range plans and had been subjected to vocational testing. *Ex. 6; Tr. 429-31.*

Kim Thomas, who was the supervisor of intake at the LCJC and conducted the December 1988 intake of Steven Myers, *Tr. 211 & 213,* did not recall seeking or seeing records from the Porter County Detention Center, where Steven had been detained immediately prior to his transfer to the LCJC. *Tr. 215-17.* These records show that Steven was on suicide precaution at the Porter County facility immediately prior to his transfer to the LCJC. *Ex. 37.* Mr. Titus, a counsellor and clinical director at the Neiquist Center where Steven Myers was a resident in 1988 prior to his transfer to the Porter County Juvenile Detention Center, *Tr. 330; 334; 341,* saw Steven at the Porter County Juvenile Detention Center shortly before

his transfer to the LCJC, *Tr. 364-66,* and testified that Steven's depression would have been "painfully obvious" when he arrived at the LCJC on December 7, 1988. *Tr. 368-69.*

In addition to the fact that Steven Myers was on suicide watch while in the LCJC in March 1988 and while in the Porter County Detention Center immediately prior to his transfer to the LCJC on December 7, 1988, there was other evidence of Steven's suicidal tendencies in documents that would have been available to the LCJC if requested. These include:

1. An April 6, 1988 report prepared by M. Sutton, a caseworker with the Lake County DPW, indicating that "Steven has also spoken of suicide . . . ;" *Ex. 31, § 1;*

2. An April 1988 petition prepared by the DPW and filed in the Juvenile Division of the Superior Court of Lake County, relating to Steven Myers, states that "[t]he child experiences extreme depression and has spoken of suicide;" *Ex. 31, § 1;*

3. A May 1, 1988 "pre-dispositional summary" from DPW caseworkers to Judge Mears states that "[t]he child had been very depressed and has talked of suicide, . . . " and that "Steven has been suicidal;" *Ex. 31, § 1;*

4. An "interagency consultation team" form, dated May 27, 1988 and showing the DPW as the referring agency, indicates Steven is "depressed and has spoken of suicide;" *Ex. 31, § 1;*

5. A "pre-dispositional investigation" report, showing a disposition date of June 9, 1988, indicates that "Mr. Myers feels Steven has suicidal tendencies;" *Ex. 31, § 1;*

6. An "intake information" form, dated August 8, 1988 and signed by David Walker, Youth Services Bureau supervisor, states that Steven "has also talked of suicide;" *Ex. 39;*

7. An undated, unsigned note from the Youth Services Bureau of Porter County file, with Steven's name at the top, indicates "suicidal – self-mutilation;" *Ex. 39;*

8. A Lake County DPW form (2956) dated August 29, 1988, states in section D "child became suicidal;" *Ex. 31, § 1;*

9. An October 4, 1988 report from a psychologist, Richard D. Millar, prepared for the Porter County Youth Service Bureau, indicates that "[s]uicidal ideations or intent should be explored," that "Steve has endorsed specific items indicating suicide has been considered and/or attempted," and that "[a] thorough clinical evaluation is recommended to assess current suicide potential;" *Ex. 40; Tr. 414-18;*

10. A November 17, 1988 form completed by Mr. Walker indicates Steven should be watched closely "for possible run, suicide, theft or other acting;" *Ex. 39;*

11. A letter dated November 1, 1988, from Mr. Titus to Ms. Rigg, refers to Steven as one who is "demonstrating acting out behavior in an attempt to deal with depression and anxiety;" *Ex. 39;*

12. A November 23, 1988 "behavior summary" from the Porter County Juvenile Detention Center refers to "past thoughts" of suicide; *Ex. 37;*

13. A November 23, 1988 letter from Mr. Walker and Mr. Titus to Ms. Rigg states that Steven "is a 16 year old male who is demonstrating acting out behavior in an attempt to deal with depression and anxiety;" *Ex. 39;* and

14. A "pre-dispositional investigation," dated November 1, 1988 but referring to events as late as December 9, 1988, states that "Mr. Myers feels Steven has suicidal tendencies;" *Ex. 31, § 1.*

In addition, there were verbal warnings; these include:

1. During December 1988 Terri Myers contacted Steven's Lake County probation officer, Tom Kacmar, to express her concern about Steven's depression and suicidal tendencies, *Tr. 565-66.*

2. After visiting Steven at the LCJC around mid-December 1988 Robert Myers asked an intake officer about suicide precaution because he was concerned about Steven's condition; *Tr. 597;* the officer reported back to Mr. Myers, on the telephone, indicating Steven would be placed on suicide watch; *Tr. 598.* Mr. Myers referred to this when he was contacted by telephone on January 4, 1989 and informed of Steven's attempted suicide; *Tr. 613-15; 227-28.*

3. Ms. Rigg testified that she discussed Steven Myers' suicidal tendencies with his probation officer, Mr. Kacmar, between October and December 1988 because Steven's father had called her to say he was afraid that Steven would get suicidal; *Tr. 307-08.* Mr. Kacmar told

Ms. Rigg that Steven's father had called him too, expressing the same concerns. *Tr. 309.*

Steven Myers was a ward of the Lake County DPW at the time he attempted suicide. *Tr. 269.* He was scheduled to be transferred to Elan, an institution in Maine, in early January 1989. *Tr. 270-72.* Because of Steven's intelligence, an I.Q. around 135, *Tr. 270,* and her success rate at Elan, around 90%, *Tr. 273,* Ms. Rigg anticipated that Steven would obtain his high school diploma at Elan and she planned to encourage him to attend college. *Tr. 273-74.* Between the date of the attempted suicide and trial, the DPW had paid $243,798 for the care and treatment of Steven. *Tr. 297-98; Ex. 38.* Ms. Rigg testified that the DPW planned to seek a judgment against Steven's parents requiring that they reimburse the DPW for the amount paid on Steven's behalf, *Tr. 304,* and that some bills remained unpaid. *Tr. 298-99.*

SUMMARY OF THE ARGUMENT

Under Indiana law, the petitioner had a nondelegable duty to provide for the care, safety and protection of Steven Myers, it knew or should have known of his suicidal tendencies, and it admittedly might have prevented the attempted suicide if it had complied with the provisions of a Consent Decree relating to staffing. Therefore, there was sufficient evidence for the jury to find negligence.

A number of affirmative defenses, including contributory negligence and incurred risk, were raised in the trial court. Regardless of the "legal pigeonhole" used by

the petitioner, the court of appeals accurately stated the question as whether Indiana would "recognize intentional efforts to commit suicide as defenses to the tort of negligently failing to prevent suicide attempts?" *30 F.3d at 852.* Since Indiana appellate courts have not addressed this question, the court of appeals reviewed the law of other states and concluded: "[w]e think it probable that Indiana would align itself with the majority – not only because the odds favor this, but also because the majority approach is consistent with the rationale of the tort." *Id. at 853.* Whether the prediction of the court of appeals is accurate remains to be seen but, because it did not depart from the usual and accepted course in making its prediction, there is no basis for granting review in this Court.

Under Indiana law Robert Myers, Steven's father, has a cause of action separate and distinct from that of his son. Therefore, each of the plaintiffs is entitled to a judgment in the amount of the statutory maximum under the Indiana Tort Claims Act, $300,000.

Because the court of appeals properly accepted the jury's findings of fact and employed the appropriate standard in determining that Indiana would *not* recognize intentional efforts to commit suicide as a defense to the tort of negligently failing to prevent suicide attempts, this case does not come close to fitting within the considerations governing review on writ of certiorari under Rule 10 of the rules of this Court.

ARGUMENT

When faced with a question of state law that has not been addressed by the state courts, a federal court should resolve it "in the same manner as a federal court resolves an evolving issue of federal law: 'with the aid of such light as [is] afforded by the materials for decision at hand, and in accordance with the applicable principles for determining state law.' " *Salve Regina College v. Russell*, 499 U.S. 225, 227, 111 S.Ct. 1217, 1218 (1991), *quoting Meredith v. Winter Haven*, 320 U.S. 228, 238, 64 S.Ct. 7, 13 (1943). This is precisely what the court of appeals did in resolving the pendent state law issues presented in this case. *30 F.3d at 852-54.*

A. Consistent with the method established by this Court, the Court of Appeals properly predicted that Indiana would not recognize intentional efforts to commit suicide as defenses to the tort of negligently failing to prevent suicide attempts.

Under Indiana law there is a special duty imposed upon those who detain people involuntarily. For example, the Department of Correction has "a duty to take reasonable precautions to preserve the life, health, and safety of prisoners." *Reed v. State*, 479 N.E.2d 1248, 1254 (Ind. 1985). *See also Cole v. Indiana Dept. of Correction*, 616 N.E.2d 44, 45-46 (Ind. App. 1993). "Because of the DOC's unusual ability to control all aspects of its prisoners' lives, the DOC's duty to take reasonable precautions may include an obligation to control the conduct of third persons." *Id. at 46.* In a case more analogous to this, where a severely disabled fourteen-year-old had been

placed in a children's center as a ward of the DPW, the Indiana Supreme Court held that the children's center "had assumed a non-delegable duty to be responsible for the care and safety of [the ward]." *Stropes v. Heritage House Childrens Ctr.*, 547 N.E.2d 244, 253-54 (Ind. 1989). This is consistent with *Restatement, Second, Torts § 314A*, imposing a special duty to aid or protect upon (4) "one who is required by law to take the custody of another such as to deprive the person of normal opportunities for protection." This duty recognized in Indiana requires institutions to use reasonable care in safeguarding patients with suicidal tendencies. *Breese v. State*, 449 N.E.2d 1098, 1103-04 (Ind. App. 1983); *Fowler v. Norways Sanatorium*, 42 N.E.2d 415, 418-19 (Ind. App. 1942). *See also Tittle v. Mahan*, 582 N.E.2d 796, 801 (Ind. 1992) (the "gist of [the plaintiff's] negligence is that the jail defendants failed to (1) monitor the decedent adequately and (2) recognize his tendency toward self-destructive behavior;" summary judgment for the defendants was inappropriate because there remain factual disputes "about whether the jail defendants breached any private duty owed by them to [the plaintiff]").

By statute, it is the policy of the State of Indiana "to insure that children within the juvenile justice system are treated as persons in need of care, treatment, rehabilitation, or protection." I.C. § 31-6-1-1(3). This gives juveniles within the system a right to rehabilitative treatment. *See Nelson v. Heyne*, 355 F.Supp. 451, 459 (N.D. Ind. 1972), *aff'd.* 491 F.2d 352, 358-60 (7th Cir. 1974), *cert. den.*, 417 U.S. 976 (1977). As a secure detention facility, the LCJC must be operated in accord with the rules adopted by the Indiana Department of Correction (DOC). I.C. § 31-6-9-5.

DOC rules require that residents, whenever possible, be classified and segregated according to sex and general behavioral characteristics, that residents' files contain information in keeping with the practices of the Juvenile Court, and that counseling be made available as part of the program from the point of intake. *210 I.A.C. §§ 4-1-2 & 4-1-4.*

The conduct of the defendant, its agents and employees, in this case must be measured against a special nondelegable duty imposed upon government when it decides to confine persons involuntarily. As noted above, Indiana recognizes that this duty of protection extends to the detainee's own acts of self-destruction. This is consistent with general negligence law. *See also Restatement, Second, Torts, § 314A; Liability of Jail for Self-Inflicted Injury, 79 ALR3d 1210, 1216-17 (1977); Suicide of Mental Patient, 19 ALR4th 7, 15-21 (1983).*

After concluding that "Indiana requires institutions to use reasonable care to prevent their wards from committing suicide," *30 F.3d at 850,* the Court of Appeals then addressed the petitioner's argument that "intentional efforts to commit suicide" provide a defense "to the tort of negligently failing to prevent suicide attempts." *Id. at 852-53.* While Indiana has held that the correct "standard of care is the test of a reasonably prudent man suffering from the same maladies and disabilities under like circumstances as those here," and therefore the mental condition and disabilities of the plaintiff must be considered on the issue of contributory negligence *Memorial Hospital of South Bend, Inc. v. Scott,* 300 N.E.2d 50, 56-58 (Ind. 1973), it has not addressed the specific issue presented by this case. Therefore, the Court of Appeals reviewed the

decisions in other states, as well as general law, and predicted that Indiana would align itself with the majority and reject defenses that are "inconsistent with the rationale of the tort." *Id. at 853* ("[w]e think it probable that Indiana would align itself with the majority . . . [and conclude that a] duty to prevent someone from acting in a particular way logically cannot be defeated by the very action sought to be avoided"). The method utilized by the Court of Appeals in predicting how Indiana would resolve this issue is entirely consistent with the decisions of this Court.

B. Consistent with the method established by this Court, the Court of Appeals properly predicted that Indiana would allow a parent and child, who suffer separate injuries, to each recover up to $300,000 under its Tort Claims Act

The Indiana Tort Claims Act, at I.C. § 34-4-16.5-4, provides:

> The combined aggregate liability of all governmental entities . . . does not exceed three hundred thousand dollars ($300,000) for injury to . . . one (1) person in any one (1) occurrence and does not exceed five million dollars ($5,000,000) for injury to . . . all persons in that occurrence.

Because Steven Myers and his father, Robert, suffered separate injury in this case, and have separate and distinct causes of action, each of them is entitled to $300,000.

No one has located an Indiana decision dealing with the precise issue presented here; however, it is clear that a

minor child and his parent(s) have separate causes of action resulting from injury to a child.

> A wrongful act resulting in an injury to a minor child gives rise to *two causes of action*, one in favor of the injured child for personal injuries inflicted and the other in favor of the parent for loss of services.

Buffalo v. Buffalo, 441 N.E.2d 711, 714 (Ind. App. 1982) (emphasis added). *See also Automotive Underwriters, Inc. v. Camp*, 32 N.E.2d 112, 114 (Ind. App. 1941). This holding is supported by the Indiana statute providing for actions involving injury to or the death of a child, I.C. § 34-1-1-8, which provides for an action by parents (subsection (b)) of an injured child and an action by a guardian for the injured child (subsection (d)). In wrongful death actions under this statute, and its predecessor, cases hold that the parents' action "is a separate and distinct action, independent of the wrongful death act." *Andis v. Hawkins*, 489 N.E.2d 78, 82 (Ind. App. 1986). This is consistent with *Restatement, Second, Torts § 703*, which addresses actions by a parent for harm, including loss of services and the expense of medical care, caused by tortious conduct against a minor child. Comment b. states that this liability to the parent is *distinct* from liability to the child. The Idaho and Texas cases cited by the petitioner, *Petition at 13*, are obviously not binding and, even if they were, they would not control this situation because the courts simply held that the statutory maximum is controlling no matter how many beneficiaries there are under the wrongful death statute. There were not separate and distinct causes of action as here.

Since a parent's cause of action for damages resulting from a wrongful act causing injury to his child exists independent of the child's cause of action, Indiana law recognizes separate injury to the parent and child. Therefore, under I.C. § 34-4-16.5-4 the *injury* to Steven Myers is separate and independent of the *injury* to Robert Myers and the trial court correctly directed entry of judgment in the amount of $300,000 for each of the plaintiffs. This result is supported by the fact that in Indiana a father is legally liable for medical care provided to his minor child. *See, e.g., Collection Bureau of Warrick County, Inc. v. Sweeney*, 434 N.E.2d 143, 144 (Ind. App. 1982) ("it is fundamental that a parent owes a duty of providing medical care for a child"); *Scott County School District One v. Asher*, 324 N.E.2d 496, 499 (Ind. App. 1975) ("both parent and child are liable upon suit by the doctor or the hospital, and consequently either may be compensated for the reasonable value of medical expenses"). In this case the Lake County DPW will seek a judgment against Robert Myers, pursuant to I.C. § 31-6-4-18, in the amount of nearly $250,000 to recover the cost of health care for Steven between the attempted suicide on January 4, 1989 and the date of trial. Since Robert Myers has a legal obligation separate and independent of any obligation imposed upon his son as a result of the County's negligence, it follows that Robert Myers has suffered an *injury* separate and independent of that suffered by his son.

Consistent with instruction no. 29 given in this case, the jury awarded Robert Myers $400,000 for all or part of the following elements of damages: loss of services, loss of love and companionship, and the expenses of health care and hospitalization necessitated by Steven's injury.

Steven, pursuant to instruction no. 27, was awarded $500,000 for all or part of the following items: pain and suffering, loss or impairment of earning capacity, the expense of future health and rehabilitative care, and disfigurement. These damage instructions, as well as the verdict form, *R. 82*, to which the defendant did not object, demonstrate the separate and independent nature of the injury to Robert and the injury to Steven.

The Court of Appeals properly concluded that *Andis* and *Buffalo* "are the closest parallels in state law, and . . . that they support the judgment in this case," *30 F.3d at 853-54*, awarding each of the plaintiffs, Robert and Steven Myers, $300,000 under the Indiana Tort Claims Act based on the jury's verdict.

CONCLUSION

For the reasons stated above, it is clear that the court of appeals applied well-accepted principles in predicting how Indiana would decide each of the legal issues presented and concluding that the jury verdict was supported by the evidence and, therefore, the petition for writ of certiorari must be denied.

Respectfully submitted,

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APPENDIX

Ind. Code § 31-6-1-1 – **Policy and purpose**

It is the policy of this state and the purpose of this article:

* * *

(3) to insure that children within the juvenile justice system are treated as persons in need of care, treatment, rehabilitation or protection;

* * *

Ind. Code § 31-6-4-18 – **Cost of services; obligation of parent, etc., or county; reimbursement; . . .**

* * *

(b) The parent or guardian of the estate of a child adjudicated a delinquent child or a child in need of services is financially responsible for any services ordered by the court unless:

(1) the parent or guardian is unable to pay for them;

(2) payment would force an unreasonable hardship on the family; or

(3) justice would not be served by ordering payment.

Ind. Code § 31-6-9-5 – **Juvenile detention and shelter care facilities**

* * *

(c) Juvenile detention facilities shall be operated in accord with rules adopted by the department of correction. . . .

Ind. Code § 34-1-1-8 – **Injury or death of child; action be parent or guardian; damages**

* * *

(b) An action may be maintained under this section against the person whose wrongful act or omission caused the injury or death of a child. The action may be maintained by:

(1) the father and mother jointly, or either of them by naming the other parent as a codefendant to answer as to his or her interest;

(2) in the case of divorce or dissolution of marriage, the person to whom custody of the child was awarded; and

(3) a guardian, for the injury or death of a protected person.

* * *

(d) In an action brought by a guardian for an injury to a protected person, the damages inure to the benefit of the protected person.

(e) In an action to recover for the death of a child, the plaintiff may recover damages:

(1) for the loss of the child's services;

(2) for the loss of the child's love and companionship; and

(3) to pay the expenses of:

(A) health care and hospitalization necessitated by the wrongful act or omission that caused the child's death;

(B) the child's funeral and burial;

* * *

(D) uninsured debts of the child, including debts for which a parent is obligated on behalf of the child; and

* * *

Ind. Code § 34-4-16.5-4 – **Limitation on aggregate liability; punitive damages prohibited**

The combined aggregate liability of all governmental entities . . . does not exceed three hundred thousand dollars ($300,000) for injury to or death of one (1) person in any one (1) occurrence and does not exceed five million dollars ($5,000,000) for injury to or death of all persons in that occurrence.

ARTICLE 4. JUVENILE DETENTION FACILITIES

210 I.A.C. § 4-1-2 – **Housing**

* * *

(h) Whenever possible, offenders should be classified and segregated according to sex and general behavioral characteristics.

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210 I.A.C. § 4-1-4 – **Care of offenders**

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(n) Counseling shall be made available as a part of the program beginning at intake and continuing through release.

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(q) An offender's file should include information in keeping with the practices of the juvenile court as it pertains to court records. . . . A daily log containing information concerning the offender's behavior and action taken shall be maintained.

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